The Madras Law Journal.

PART VIII.] AUGUST 1897. [VOL. VII.

GOVERNMENT OF INDIA ON APPEALS.

We published in the May and June number of this Journal an important resolution of the Government of India relating to the cutting down of appeals in civil cases. The Government of India observe that the proportion of appeals preferred from the judgments of original courts is much larger in India than in England, and that the honest man with slender means is at the mercy of the man with a long purse, however unjust his cause may be. A comparison is made of the figures relating to appeals from the County Courts in England with those relating to appeals from the decisions of the Regular Courts in India in original suits. A number of suggestions are made, calculated in the opinion of the Government of India to reduce the number of appeals and to promote justice. There are several points in the comparison which betray considerable ignorance of the conditions under which the comparison is made.

In England there is no appeal provided by law from the decisions of the County Courts, except on questions of law or procedure, or of the admissibility of evidence. Where either of the contesting parties desires it, the action is triable by a jury if it exceeds £5 in value. (See Ss. 100 and 101 of 51 and 52 Vic. ch. 43.) If appeals from County Courts in England are the standard of comparison, it would be proper to take the number of revision petitions filed in the High Court under S. 25 of the Mofussil Small Cause Courts Act as a safer test, such petitions being of the nature of appeals on questions of law from the decisions of Courts of Small Causes. The ordinary limit of the small cause jurisdiction in England is 50£, though in certain actions of the nature of those that are decided by the Chancery Division of the High Court a limit of 500£ has been fixed. (See Ss. 56 and 67 of 51 and 52 Vic. ch. 43). The classes of suits triable by the County Courts are

generally like those that fall within the province of a Mofussil Small Cause Court, though there are some differences of detail. It ought, however, to be remembered that a sum of Rs. 5 is to an Indian what, perhaps, a sum of £50 is to an Englishman, the average income per head of the population in India being very much less than that of an Englishman in England and the accumulated wealth of India bearing a very inconsiderable proportion to that of England. If we are to take into account the disparity in the pecuniary positions of the respective peoples and the high qualifications of the judges presiding over the County Courts in England who generally compare favorably with our High Court judges in regard both to intellectual calibre and legal attainments, the impropriety of the comparison will become apparent. The County Court judgeships in England are all of them filled by barristers of learning and experience while the majority of our judges in India are ignorant of the rudiments of law. Having regard to the differences pointed out, it seems natural that a greater amount of finality should be allowed to the decisions of County Courts in England than can be accorded to those of the subordinate judiciary in this land.

There is a prevailing impression that the people of this country are exceedingly litigious. We are unable to see what foundation there is for this inference. Certainly, the figures cited do not warrant the inference, as many factors have to be taken into consideration before instituting the comparison. We have already pointed out some, and it is necessary to draw attention to another important factor. Glancing at the reports, one is fairly staggered by the enormous number of cases dealing with questions of adjective law forming the large majority of the cases reported. A system of laws, which necessitates a great divergence of opinion as regards the interpretation of rules of procedure or limitation or relating to stamp or registration, can never be regarded as satisfactory. It is difficult to find sometimes a single case upon the Law of Limitation in the English reports of a whole year. But scores of them meet your eye, as you glance through the pages of the indexes of your Indian reports, and again, much divergence of views between the several High Courts upon these questions. How can the people be blamed if, with reasonable hopes of overturning the judgment of the lower court upon some technicality or other, they appeal to the

wisdom of an appellate tribunal. The excellence of adjective law consists in its simplicity, and that department of law in this country is as complex and difficult to understand as it can be.

Having premised these observations with regard to the circumstances which vitiate the comparision between litigation in India and in England, we proceed to consider the remedies proposed which betray an amount of ignorance, not easy to understand, in the Government of India, from which the resolution in question proceeds—

1. The first suggestion is that where appeals from lower courts are heard by a single judge of the High Court, there should be no appeal from his decision under the Letters Patent or otherwise, except by leave of the judge. We may at once point out that the decision of a single judge on appeal is under any circumstances highly unsatisfactory. Appeals are always heard in England by Divisional Courts of two or more Judges, and appeals from the decisions of Country Courts on questions of law may be carried up to the House of Lords, passing through the intermediate stages of the High Court and the Court of Appeal. There is no confidence in the country in the judgment of a single judge of the High Court having regard to the qualifications possessed by our judges in this country. If single judges of the High Court dispose of cases satisfactorily, it is in no small measure due to the wholesome fear of an appeal. The great advantage of an appellate tribunal presided over by more than one judge consists in the fact of the prejudice or the bias or the angularities of an individual judge being in some measure removed or neutralized by another judge co-operating with him. To take away that privilege and tell the party that there is no appeal from the decision of a single judge is to inflict certain injustice in the large majority of cases and to create certain discontent among the litigants. Again, to leave it to the judge himself who decides the cases to determine whether an appeal can be taken from his judgment will have a demoralizing effect. We have no reason to think that such a power will be exercised satisfactorily. Public opinion and the traditions of the Bench are not so powerful, nor are our judges sufficiently enlightened to regard an appeal from their judgments with perfect equanimity. We have no hesitation, therefore, in condemning the first proposal.

2. The second proposal is that there should be no appeals from the decisions of a single judge on the Original Side of the High Court in suits whose value is below Rs. 2,000, except with his leave. There does not seem to be any limitation in England with regard to judgments in original suits, although there seems to be some provision in England with regard to interlocutory orders.

Order 58 provides for appeals from decisions of the High Court to the Court of Appeal. The special leave in cases of appeals from interlocutory orders has to be applied for in the Court of Appeals itself. (See Rule 15, Order 58.) If regard is had to the large percentage of decisions of single judges on the original side that are reversed in appeal, there is no reason to do away with the necessity of an appeal. Indeed, there is every reason to suppose that the judgment of the judge on the Original Side is likely to require revision in many a case. The conditions under which an original trial is conducted giving rise to the free play of passions and prejudices are not the best surroundings for a sound and impartial judgment, and if we take away the fear of an appeal which operates as a deterrent against error in many more cases than are really appealed against, the judgments of a single judge will be much more unsatisfactory than they are. The appellate judges with the whole evidence before them and with the consequent facilities to make a survey of the whole case are likely to arrive at a more correct conclusion in the case than the original judge recording evidence bit by bit with attention diverted from the real issues by circumstances of no real significance.

3. The third suggestion is that in suits exceeding in value Rs. 10,000, the trial should commence in the High Court itself. We do not see the object of this proposal. Now a District Judge or a Subordinate Judge tries the case, and on appeal the decision is heard by two judges of the High Court, from whose decision there is an appeal to the Privy Council if they disagree with the lower court, or there is a point of law. The change to the Original Side of the High Court does not involve an economy of judicial power, nor does it conduce to better justice. A transfer would be attended with great inconvenience to parties and witnesses who may be obliged to travel several hundreds of miles each time the case is adjourned, the languages of the witnesses cannot be accurately

understood, the dialectical differences being sufficiently marked on, and the witness himself dragged to a perfectly strange place, while, on the one hand, freed from the deterrent influence of that public opinion of his neighbours which is one of the best safeguards against falsehood, is on the other exposed to unsympathetic surroundings which will deprive the honest witness of that degree of nerve which is essential to a satisfactory performance in the witness box.

On the other hand, the provision contained in the Letters Patent seems to have been forgotten by the authors of this resolution. It provides for the High Court exercising extraordinary original jurisdiction in any mofussil centre (*vide* S. 31 of the Calcutta Letters Patent) somewhat in the nature of the circuit system in force in England. There is also the power both under S. 25, Civil Procedure Code, and under S. 13 of the Letters Patent to transfer to its own file any original suit pending in a mofussil court. Surely before the somewhat drastic remedy suggested in this proposal is adopted, the public is entitled to know what attempt has been made to give effect to these provisions. We can certainly imagine a Judge of the High Court sitting in Madura or Rajahmundry and trying a big zemindari litigation so as to set an example to mofussil courts as to how a great trial may be conducted by a judge with due regard to courteous consideration of points placed before the judge by the bar and the speedy disposal of vexatious litigation.

4. The next proposal is to require security for costs in appeal; and necessarily, when the appeal is from concurrent decisions of two courts. It seems to us that the powers possessed by the courts in this country in this respect are ample. To require security for costs compulsorily in all cases may be to deny justice in many. For it often happens that the poor litigant finds himself harassed by the weapons which the law has placed in the hands of his rich opponent, and to add to his troubles by compelling him to give security is practically to shut the door against appeal. A second appeal lies only on a point of law, and if the court will exercise the power conferred upon it by S. 551, there is no reason for a respondent being harassed by a vexatious appeal.

The next proposal is to restrict the scope of S. 622. That section has been already restricted by the decision of the Privy Council

in *Amir Hassan Khan* v. *Sheo Baksh Singh*, I. L. R., 11 C., 6, and the Madras High Court has placed an interpretation upon the words 'acting illegally' and 'with material irregularity' which confine their operation to cases where the judgment of the court below is perverse. It is difficult to deny that the High Court should have the power of interference even in such cases. One thing apparently that seems to have been forgotten is that the possibility of interference by a superior tribunal enforces a more careful disposal by the subordinate tribunal in all cases generally.

6. The next suggestion is apparently to widen the scope of S. 586 so as to deny the right of second appeal in some more cases than are within the definition of a small cause nature. There is perhaps no great harm in somewhat extending the class of cases that fall under S. 586 so as to include pecuniary claims, though enforceable against immoveable property. Unless any detailed suggestion is made, it is difficult to deal by anticipation with the possible extension of the scope of S. 586.

7. The next suggestion is to deny a right of second appeal on questions of procedure. S. 578 of the Code provides that a decree shall not be reversed by reason of a mere error of procedure. If it is remembered what a large percentage of the decisions reported in the Indian reports turn on questions of procedure, it will be impossible to put up with the large mass of error of which the Subordinate Courts are guilty and to rest content with the decisions arrived at betraying such ignorance of the rules of procedure. The moment that it is announced that no second appeals will lie on questions of procedure, the procedure of the Subordinate Courts will become less satisfactory than it is.

8. The next suggestion is to remodel the Presidency Small Cause Courts on the lines of the English County Courts and suggestion No. 9 is to confer on all Small Cause Courts the power to try all liquidated demands within the limits of their pecuniary jurisdictions. These two suggestions appear to have been made out of ignorance of the existing law. Though we are aware that there are differences as regards the scope of their jurisdictions between the English County Courts and the Small Cause Courts of the Presidency towns, there is no objection to assimilating the courts in

this country to the County Courts in England. Such a step will remedy one serious defect in the law as applicable to the Presidency Small Cause Courts, namely, the absence of the right of appeal on questions of law. It is competent to the Government to invest mofussil Subordinate Courts with jurisdiction up to Rs. 500 and Munsifs' Courts up to Rs. 200. This power may be fully and freely exercised.

In none of the suggestions we have dealt with above is there any real attempt to deal with the problem. The simplification of adjective law is a task to which the Legislature ought to address itself. A limitation law with various periods and starting points and a Code of Procedure which is full of difficulty to the practising lawyer in its interpretation add to the uncertainties of the law and are a disgrace to the statute book. If the appellate courts in the country were stronger than they are, there would not be any ground for complaint that the number of appeals is so large. It is highly incongruous that from the decisions of an experienced Subordinate Judge possessed of legal training, knowledge of the people and judicial experience, an appeal should lie to a District Judge deficient in all these qualities. The Legislature ought to step in and abolish the appeal from the Subordinate Judge to the District Judge and direct the appeal to the High Court itself in suits between Rs. 2,500 and 5,000 in value. That will reduce the number of appeals in such cases to one instead of two at present. The appeal will lie to a better tribunal, consisting of two judges instead of practically to an inferior tribunal and on questions of fact also. This will necessarily reduce the expense to parties in such cases. Moreover, the anomaly will be removed of the appeals in suits valued between Rs. 2,500 and 5,000 lying to the High Court in some districts and to the District Court in others according as there are no Subordinate Judges, or there are Subordinate Judges in the District.

It seems to us moreover that in all suits exceeding Rs. 1,000 in value appeals may lie directly to the High Court from the decisions of District Munsifs. This will bring the work of District Munsifs more under the eyes of the High Court, and thereby effect an improvement in the quality of their work and reduce the number of appeals in such cases also. The jurisdiction of District Munsifs

in Bengal is only up to Rs. 1,000, except when they are empowered to try suits of a higher value up to Rs. 2,000. There is no objection to District Munsifs trying suits between Rs. 1,000 and 2,500 if the appeal will lie directly to the High Court. Where District Munsifs try suits below the value of Rs. 1,000 as original courts, the appeal may lie to a court consisting of the District Judge and Subordinate Judge and the decision of this appellate tribunal where it agrees with that of the original court may be final. Unless the reform of the judicature of this country on the lines above indicated so as to strengthen the first appellate court is effected, it will be difficult to hope for much improvement in the quality of the judicial work. By our suggestions, we require an addition to the number of judges in the High Court, but they will relieve the subordinate tribunals of some portion of the work and place all subordinate tribunals under the immediate supervision of the High Court. The number of appeals will be cut down, and there will be a great saving of expense to the parties, but it may involve an additional expenditure to the country. The British Government in India whose chief title to recognition as a just ruling power consists in the purity, the impartiality and the justice of its judicial administration, will have earned an undying claim to the gratitude of the people by reforming its judicature in the spirit indicated by the foregoing suggestions. To be led away by a cry that the people are litigious and that appeals ought to be put a stop to somehow is not the spirit of British justice and is utterly at variance with the principles which regulate the system of judicature in England. There will no doubt be difficulties of detail in carrying out the suggestions we have made, but they are of no formidable character.

ILLATOM ADOPTION.

The term *illatakaru* means, according to Wilson, "a bride's father having no son and adopting his son-in-law." As pointed out by *Holloway*, J., in *Chella Papi* v. *Chella Koti,** *illatom* adoption is a special custom which entitled a father-in-law to select a son-in-law who should take his property as if he were a son. The

* 7 M., H. C. R., 25.

custom amounts to a power of disposition inconsistent with the ordinary rules of law. Or as Mayne puts it (*vide* S. 190, A), it consists in the affiliation of a son-in-law, in consideration of assistance in the management of the family property. The custom prevails in the *Motati Kapu* or *Reddi** caste in the districts of Bellary and Kurnool (*vide* I. L. R., 4 M., 272). It is also observed by the *Pedda Kapu* or *Reddi* caste in Nellore (vide *Balarami* v. *Pera*, I. L. R., 6 M., 267). The custom also appears to prevail among the *Nayudus* of North Arcot (*see Chengama Nayudu* v. *Munisami Nayudu*, I. L. R., 20 M., 75). In a case recently decided, it was held that the custom does not obtain in the *Konarazu* caste at Vizagapatam (*Narasimha Razu* v. *Veerabhadra Razu*, I. L. R., 17 M., 287). In an old case from Trichinopoly *Tayumana Reddi* v. *Perumal Reddi*, 1 M., H. C. R., 51, the District Munsif observes that the plaintiff was allowed to be the son-in-law of the deceased, and that the 4th defendant had admitted the existence among persons of the *Reddi* caste of the practice of constituting a son-in-law heir to the property of his father-in-law. But the High Court reversed the decree on the point that the alleged custom was not proved, and held that a father-in-law, although of the Reddi caste, cannot disinherit his heir in favor of his son-in-law.

It was pointed out by counsel in the case first cited (*Chella Papi* v. *Chella Koti*) and the suggestion was also agreed to by the Bench that the custom had its origin in the practice of appointing daughters. When the head of a family has no son to continue his lineage, but only a daughter, it is natural for him to keep the daughter in his own house even after she had been married (the son-in-law also becoming a member of his family), and to adopt the children born of her in preference to bringing in strangers. This practice obtains even now when a sonless man having a daughter is a wealthy person and an affectionate father. According to the ancient writers, her son became the son of her father if he had no male issue; and he became so, not only by agreement with her husband, but by the mere intention of her father, without any consent asked for or obtained. Hence Yajnavalkya † prohibited a man

* "The name of the principal caste of Telinga cultivators."—Wilson.

† Yajnavalkya, I., Ss., 52-3.
Gautama, XXVIII, Ss., 19, 20.
Manu, III, S. 11.

espousing a girl who has no brothers, lest her father should take her first son as his own. Vasishtha * states that a daughter who has no brothers reverts as a son to the family of her father. When a daughter is thus appointed, her husband will have to come and live in her family. Only a poor man would thus accept a position of dependence in his wife's father's family; and even a poor man would not willingly accept such a position, unless he is given some interest in his father-in-law's property. Manu † states that an appointed daughter is equal in all respects to a son and shares the family property equally with him. "The son of a man is even as himself, and as the son, such is the daughter." If the appointed daughter dies without a son, Manu ‡ goes on to state that her husband is entitled to her property. Thus it would be seen that sufficient provision was made for the son-in-law. But, now, in most parts of India including Bengal, a son-in-law is not recognized to possess any interest, either vested or contingent, in his father-in-law's property. However, there are usages to the contrary observed in some places. For instance, amongst the *Awans* in Sialkot, if the *Ghar-Jamai* (the name by which a son-in-law affiliated to his father-in-law's family is known in Northern India) has given up all claims to his father's property, he will retain his claim to the father-in-law's property, even if his wife die and he marry another. (*See* Tupper's Punjab Customs, Vol. III., 84, and Tagore Law Lectures for 1888, p. 456, &c.)

In the Madras Presidency, it is stated that this practice has assumed the form of *illatom* adoption. But the custom prevails exclusively among Sudras, and it may as well be doubted whether the practice of appointing a daughter referred to above was ever accepted by them. The custom is not resorted to for any spiritual purpose whatsoever. As pointed out by their Lordships in *Hanumantamma v. Rami Reddi*,§ it would seem that at the present day, temporal motives, the securing of assistance in the management of the family property and the provision of a protector in the event of the removal of the head of the house by death, induce the resort to the custom; and the circumstance that the son-in-law so introduced takes the place of the son on the devolution of the estate

---

* Vasishtha, XVII, S. 12.
† Manu., IX, Ss. 127-30, 134.
‡ Manu., IX, S. 135.
§ I. L. R., 4 M., 272.

may be explained by the suggestion that the inheritance is a consideration for services rendered and to be rendered.

The custom of *illátom* is different in many respects from the ordinary law of adoption. *Illatom* has for its basis no religious significance whatever. An adopted son passes out of his own natural family into the adopting family, so far as regards all rights of inheritance and the duties and obligations connected therewith; and adoption does not obliterate the tie of blood, or the disabilities arising from it. But in the case of *illatom,* the connection with the natural family is not necessarily severed and his rights of inheritance in that family continue to subsist. An adopted son becomes, in the strictest sense, a co-parcener (thus becoming subject to the doctrine of survivorship) and would take the property dscending to him as ancestral property; but the *illatom* son-in-law takes the property as his own self-acquisition and consequently with none of the restrictions or limitations attaching to ancestral property. An *illatom* son-in-law and sons of the father-in-law, though they may live in commensality, are not to be regarded as forming a co-parcenary, and there is therefore no right of survivorship. In competition with after-born sons, he does not take the share prescribed by law for adopted sons in the several schools, but shares with them equally, thus possessing higher rights than those of an adopted son. It is doubtful whether an *illatom* son-in-law may be taken when there is already a son; and an adoption may be made even during the existence of an *illatom* son-in-law.

No mention whatever is made concerning *illatom* adoption in any of the texts of Hindu Law. Our only authorities are a few decisions of the Madras High Court in which the alleged custom has been affirmed to exist. From what is pointed out above, it will be clear that no deductions whatever may be drawn by way of analogy from the ordinary law of adoption. *Illatom* is purely customary law; and like any other custom, it must be strictly proved by evidence. The well-known requisites of a valid custom must, amongst others, be proved to the entire satisfaction of the court. The custom set up must not have sprung from any agreement. As their Lordships said in the *Oorcad case,* * "What the law requires before an alleged custom can receive the recognition of the court,

* 3 M., H. C. R., 75.

and so acquire legal force, is satisfactory proof of usage, so long and invariably acted upon in practice, as to show that it has, by common consent, been submitted to as the established governing rule of the particular family, class or district of country; and the course of practice upon which the custom rests must not be left in doubt, but be proved with certainty."

Next, as to the incidents of *illatom* adoption. It was laid down in *Hanumantamma* v. *Rami Reddi** that he who has at the time no son, although he may have more than one daughter, and whether or not he is hopeless of having male issue, may exercise the right of taking an *illatom* son-in-law; and it was considered unsafe to infer that the affiliation by *illatom* is analogous to adoption in any other respect, save in the circumstance that the *illatom* son-in-law is regarded for purposes of inheritance as a member of the family into which he is admitted. Mayne says that it seems uncertain whether such an affiliation can take place where there is already a son. Such a son-in-law stands in the place of a son and shares equally with him unlike an adopted son. The facts of the case material to our present purpose were as follows: One Linga Reddi had an *illatom* son-in-law and a son subsequently born. The son-in-law died leaving a son by name Rami Reddi and the subsequently born son died leaving a widow. The widow contended that Rami Reddi could only obtain the share prescribed by law for an adopted son. The High Court remarked that it could not be inferred from any similarity in his position to that of an adopted son that he would take the same share as an adopted son in competition with a natural-born son and held that he takes an equal share. It is not clear, however, whether in the life-time of his father-in-law, he enjoys the power of a son to demand partition.

The next question is whether the share so taken by the *illatom* son-in-law is to be treated as ancestral property in his hands or as self-acquired property free from all restraints on alienation which naturally attach to ancestral property. The point came for decision before their Lordships *Holloway* and *Innes*, J. J., in *Chella Papi* v. *Chella Koti*. After pointing out that the custom of *illatom* amounts to a power of disposition inconsistent with the ordinary rules of law, *Holloway*, J., raised the question

* 4 M., 272.

whether a person so coming in by exception to the ordinary rule of inheritance is thereby placed in the position of a son, who at his birth becomes a joint tenant with all the rights of such a son and with all the restrictions upon alienation which would exist as to his own son if it had been an estate of inheritance. He held that the *illatom* son-in-law is a *purchaser* within the meaning of that term according to English Law, that he does not and cannot stand in the same position as one who becomes a joint tenant at the moment of his birth, that he could not take the property as ancestral as it would be taken by an adopted son, and that he takes the property as his own self-acquisition, and consequently free from all restraints on alienation—conclusions in which *Innes*, J., concurred.

We have then to consider whether the property so taken by the *illatom* son-in-law descends to his own heirs, or to the heirs of the adopter. It has been decided that such property descends to his own heirs. (*See Ramakristna* v. *Subbakka*, I. L. R., 12 M., 442.) One Narasa Reddi who had admittedly been taken as *illatom* in the family of his father-in-law died leaving property which he had acquired by virtue of his *illatom* marriage. He was succeeded by his son, Pichi Reddi, who died without issue, leaving only a sister surviving him. In a suit brought by the natural brother of Narasa Reddi, who was the managing member of his family, to recover the property from the sister of the last holder, the District Judge framed the following issue: "Are the natural brother and nephews of an *illatom* son-in-law heirs-at-law of that *illatom* son-in-law's sons who survived him, in respect of the property of the family to which he was affiliated in preference to his daughter?" He recorded a finding in the negative and dismissed the suit. On appeal, *Parker*, J., said that, according to the ordinary rule of Hindu Law, his paternal uncles are nearer reversioners than his sister, and that it is for those who allege a special custom or a special arrangement at variance with the ordinary rule of law to prove the same and held that the *onus* of proving that the sister is entitled to the property fell upon her. *Shephard*, J., referred to an another incident of *illatom* adoption to be presently mentioned, *viz.*, that the *illatom* son-in-law does not lose his rights of inheritance in his natural family and said that from this it must follow that the members of his natural family must equally have such rights in respect of

property acquired by him as they would otherwise have had. It is no doubt hard that property belonging to one family should thus descend to persons who are outside the family altogether; but that is a necessary consequence of the alienation in favour of the *illatom* son-in-law. Consequently, it was held that the plaintiff was *primâ facie* entitled to recover, and the decree of the lower Court was accordingly reversed and the case remanded for trial on the merits.

Another question is whether after his affiliation in the family of his father-in-law, an *illatom* son-in-law retains his rights of inheritance in his natural family. The question was considered and answered in the affirmative. When the case * in which this point was decided came before the High Court, their Lordships *Innes* and *Muttusami Aiyar*, J. J., first remanded the case for a finding on the question "What effect, if any, the taking a son out of his natural family as an *illatom* son has upon that *illatom* son's rights of survivorship and succession in his natural family;" and directed that evidence be taken from Bellary, Kurnool, Cuddapah, Nellore, North Arcot, South Arcot and other Districts in which the custom prevails. Evidence, however, was not taken, as the plaintiff was unwilling to establish by further evidence the custom for which he contended. In the case in question, the *illatom* son-in-law, before he left his family, executed a written document renouncing his rights in his natural family. Their Lordships held that he was entitled to a share in the property left by his father's divided brother and observed: "The circumstance that a *karar* was considered necessary to preclude the first defendant (the *illatom* son-in-law) from succeeding in his immediate family is evidence that, without it, in the opinion of those concerned, he would have succeeded, notwithstanding the custom of *illatom;* and this tends to show that that custom does not affect existing rights of property of the person taken in *illatom.*"

The last question which was considered and decided by the Madras High Court is this: Whether when an *illatom* son-in-law and an adopted (or natural) son live in commensality, they are to be

* I. L. R., 9 Mad., 114.

† I. L. R., 7 M. H. C. R., 25.

Balarami v. *Pera*, I. L. R., 6 M., 267.

regarded as forming a co-parcenary with its usual incidents. In an early case (*Mopur Andemma* v. *Dhamavarapu Subba Reddi*, S. A. No. 103 of 1868, 6 Mad. Jur. (1871), 59) decided by *Scotland*, C. J., and *Innes*, J., their Lordships held that there was co-parcenary, because the *illatom* custom was a mode of affiliation. But it should be noted that no evidence was taken in that case, and later decisions are in direct conflict with this decision. In *Chenchamma* v. *Subbaya* (I.L.R., 9 M., 114) the point arose directly for decision: one Ramanappa gave his daughter, Mangamma, in marriage to Ala Ayyanna and retained him as his *illatom* son-in-law. Subsequently he adopted a son, Venkataramanappa by name. It should be observed that this adoption was not at all questioned; and on the other hand it was treated as valid in every respect. This indicates that after the affiliation of an *illatom* son-in-law, the *illatakaru* can make a valid adoption). Ala Ayyanna had by Mangamma a son, Ramudu, and a daughter, Sitamma, and Ramudu had a son, Sitaramudu. Ala Ayyana's wife subsequently died, and after renouncing his *illatom* rights in favour of his son, he married another. Venkataramanappa, the adopted son, married Sitamma. (This shows that the daughters of an *illatom* son-in-law can validly espouse the sons of his father-in-law. If the *illatom* son-in-law is to be himself treated for all purposes as a son, then his daughter cannot certainly marry his would-be brothers). Venkataramanappa had by Sitamma one son, Punnayya, and one daughter, Chenchamma. Ramudu and Venkataramanappa died first and Punnayya died afterwards. Sitaramudu, the sole surviving male member of the family, alienated the family lands, and Chenchamma questioned the alienation. Both the lower Courts upheld the alienation as made by the sole surviving male co-parcener of a joint Hindu family, and it was urged in second appeal that Ayyanna having separated from his father-in-law, he could not assign his *illatom* right to his son, and that even if it was assignable, Venkataramanappa's adoption put an end to that right. *Muttusami Aiyar*, J., who took part in that decision, held that, as Ayyanna was taken as *illatom* before Venkataramanappa was adopted, the adoption could not devest any interest already vested in Ayyanna. This implies that the moment a person is taken as the *illatom* son-in-law of another, the former acquires a vested interest in the latter's property. The same learned Judge also held that it was competent to Ayyanna to renounce his *illatom* rights in favour

of his own son. With regard to the further question, whether the *illatom* son-in-law and the adopted son are to be considered as forming a co-parcenary, the same learned Judge observed: "The right of survivorship is an incident under Hindu law of co-parcenary, which is only possible between the male descendants of a common paternal ancestor, and in the absence of proof that it is also an incident of the *illatom* custom, we are unable to treat it as such, for the custom derogates from the Hindu law and the extent to which it does so must be proved like any other fact when it is disputed." An issue was sent as to whether there can be co-parcenary between an adopted son and an *illatom* son-in-law; but no evidence having been produced, it was held that in the absence of proof that the right of survivorship is an incident of the custom, it cannot be treated as such. It was accordingly decided that Chenchamma could recover a moiety of the lands and the alienation of Sitaramudu was to that extent set aside. This decision was followed in *Malla Reddi* v. *Padmamma*, I.L.R., 17 M., 48, in which it was clearly laid down that, according to the usage prevailing in the Nellore district, there is no right of survivorship as between an *illatom* son-in-law and the members of the family into which he is affiliated.

Another curious point arose for decision in a very recent case from North Arcot. (See I.L.R., 20 M., 75.) The facts of the case are as follows:—A Hindu, having two sons and an *illatom* son-in-law, divided the whole of his property between them, reserving no share for himself. A third son was subsequently born, and he sued for a partition of the property which had been already divided between his brothers (defendants Nos. 1 and 2) and the *illatom* member of the family (defendant No. 3). The Subordinate Judge found that the third defendant was a member of the family as he claimed to be and confirmed the decree of the District Munsif under which the plaintiff obtained a one-third share of the lands originally divided between the defendants Nos. 1 and 2. The High Court, while modifying the decree on another point, dismissed the appeal as against the third respondent with costs; that is to say, the subsequently born son was held to have no claims as against the *illatom* son-in-law. No evidence whatever appears to have been taken on this point, and the decision might be re-considered when a fresh opportunity offers itself. If this subsequently born son also had already

been in existence while the partition took place, he would also be entitled to a share, and the share of the *illatom* member would also be proportionately reduced. While the *illatom* son-in-law takes an equal share along with the other sons, it appears strange that a subsequently-born son should divest only the estate already vested in his brothers to the extent of his share and not also the estate vested in the *illatom* son-in-law; and there appears to be no reason why he should thus be more favorably treated. Take the case of a Hindu who dies leaving only an *illatom* son-in-law and a pregnant wife: Suppose a son is subsequently born: Now, the question is whether such a son can divest, at least to the extent of his share, the estate that has already vested in the *illatom* son-in-law? Take also another quite possible case. Though it is doubtful whether an *illatom* son-in-law can demand partition during the lifetime of his father-in-law, yet there is nothing to prevent the latter from coming to a partition with the former. Suppose such a partition actually takes place and the father-in-law reserves no share for himself: What, then, would be the position of a son subsequently born to him? Would he be entitled to demand a share from the *illatom* son-in-law? In the present state of the authorities, it is not possible to give definite answers to these questions.

To sum up what has been said concerning the incidents of *illatom* adoption :—

(i) For purposes of succession, the *illatom* son-in-law stands in the place of a son; and in competition with natural-born or adopted sons, he takes an equal share.

(ii) He takes such property as his own self-acquisition and therefore free from all restraints on alienation.

(iii) The property so taken descends to his own heirs and not to the heirs of the adopter (*illatakaru*).

(iv) He does not lose his rights of succession in his own family.

(v) An *illatom* son-in-law and an adopted (or a natural) son living in commensality do not form a co-parcenary, and there is no right of survivorship between them.

P. DURAISWAMI AIYANGAR.

TRANSLATED FROM THE VIVADARATNAKARA.

CHAPTER VI.

On Partible Property.

On this subject Kātyāyana says: "The wealth of the grandfather, the wealth of the father, and what they themselves had acquired must all be divided at a partition among co-heirs. After giving what has been given by the father out of affection, the remainder shall be divided. That shall be taken by the sons and by male issue in due order to the fourth degree."(1) *Commentary*—What they had themselves acquired except what belongs to any of them exclusively. 'Given out of affection, etc.,' means 'which the father had out of affection promised to give.' That must be given and the remainder only divided.' As the text says: "To three alone should libations of water be given and to three alone riceballs should be offered," he, who confers spiritual benefit by giving the *pinda* to the deceased, is entitled to share in the wealth of the deceased. Halāyudha holds that the expression 'to the fourth degree' refers to the person to whom the father made the promise of gift.

Nārada says: "In order that the father may not remain a debtor, the balance alone of the father's wealth left after paying his debts and discharging his obligations shall be divided by the brothers."(2) *Commentary*—'His obligations' means 'money promised to another by the father.' Prakasakara reads: '*Pitridanebhyah*' for '*Pitridayebhyah.*' Even according to that reading the meaning is the same.

Kātyāyana says: "At the time of partition all the debts which have been contracted by the brother, the paternal uncle and the mother for family benefit should be paid by those who share the wealth. The debt must be paid to the creditor only where after dispute it is proved by evidence; but otherwise it shall not be paid."(3) *Commentary*—The meaning of this is where the debt contracted by the brother, etc., becomes a matter of dispute, it

(1) Cole. Dig., Vol. II, 478, CCCLXVIII, and 479, CCCLXIX.
(2) Narada, XIII, 32.
(3) Cole. Dig., Vol. II, 480, CCCLXXI.

shall be paid to the creditor only when after dispute arises it is proved by the creditor by evidence and not otherwise.

The same author says: "Debt contracted by the father, his own debt connected with the father's debt and the debt contracted by himself for family benefit; all these debts should be paid by him with his kinsmen when partition is made."(1) *Commentary*—'*Pitriyam*' means 'contracted by the father.' 'Connected with the father's debt' means 'incurred by himself to discharge the debt contracted by the father.' 'His own debt' means 'debt borrowed by him on account of the family as distinguished from the debt of the brothers, etc., spoken of in the previous verse, 'debt contracted by himself for family benefit.'

Again Kātyāyana says: "What has been given by one individual for religious purposes or out of affection and debts contracted by him for his own benefit shall not be divided (among all the heirs), if found to be so; for one cannot give away out of the paternal wealth."(2) *Commentary*—Kalpataru says, that whatever is given away by one co-parcener out of the common property for his own religious benefit and whatever is lent by him to another out of affection on his own responsibility shall be debited to him solely at the partition; for there can be no gift by one alone out of common paternal wealth. Prakāsakāra and Pārijāta, however, hold that the debt contracted by one of many for his own individual religious benefit, the debt borrowed by him and given to another out of affection, and the debt incurred by him for his own individual enjoyments; these three kinds of debt, when found to be so contracted, should be separated. They must be paid by him alone who incurred them and not by all out of the common paternal wealth. As a matter of fact all this is contemplated by the text, and it must therefore be construed to cover all these cases.

Again Kātyāyana says: "House, land and quadrupeds when discovered should be divided. If there be doubt that property has been concealed, an ordeal in that case is ordained."(3) *Commentary*—The word '*pratyaya*' means 'ordeal.' The meaning of this

(1) Cole. Dig., Vol. II, 480, CCCLXXII.
(2) Cole. Dig., Vol. II, 481, CCCLXXIII.
(3) Cole. Dig., Vol. II, 484, CCCLXXIV.

text is rendered clear by the following text of the same author. "Bhrigu has declared that household utensils, beasts of burden, milch cattle, jewellery and servants must be distributed (among the heirs) when discovered, and if concealed, the *cosa* is ordained."(1) *Commentary*—'Household utensils' means 'the mortar and the rest.' 'Workmen' means 'servants, etc.' The rest is perfectly clear.

Manu says: "Let the value of a single goat or a single beast with uncloven hoofs never be divided among them. Such a single goat has been ordained to the eldest alone."(2) *Commentary*—The odd sheep, uncloven beast, etc., should not be valued in money and the value divided. But they shall be taken by the eldest alone.

Here ends the chapter on Partible Property.

CHAPTER VII.

On Impartible Property.

On this subject, Manu says: "Property acquired by one's own learning belongs to him alone as also what was given to him by a friend, presented to him at his marriage, or along with the honey-mixture."(3) *Commentary*—Wealth acquired by learning and wealth received at the time of marriage will be subsequently defined. '*Mitram*' means 'received from a friend.' '*Madhuparkikam*' means 'given as a token of respect along with *Madhuparka* (honey-mixture).' 'All this solely belongs to him' means 'is not liable to be divided.'

Yājnavalkya says: "He who recovers property duly descended and taken away shall not be divided with his co-parceners; as also wealth acquired by learning."(4). *Commentary*—'Duly

---

(1) *Note.*—A *cosa* is one of the many ordeals recognized by Smriti writers and in vogue in former times. It consists in the suspected being made to drink of water in which a holy idol had been washed, the guilt or innocence of the suspected being judged by the visible effects caused by the drinking of such water. Cole. Dig., Vol., II, 484., CCCLXXIV.

(2) Manu, Chap. IX., 119.

(3) Manu, Chap. IX, 206.

(4) Yājnavalkya, Chap. II, 119.

descended' means 'descended from his ancestors.' He among the heirs who recovers such property taken away by others and not recovered by his previous ancestor from incompetence or other causes, shall not divide it with the other heirs. Here the author of the Mitakshara observes. 'This is allowed if permitted by the other heirs.' As regards the text of Hārita found in the Samhita which says that he who recovers singly and by his own pains, land lost by his ancestors, takes a fourth share of it, the others taking their due shares in the rest, it is unreasonable, the text not being quoted in Smritimahārnava, Kāmadhenu, Kalpataru, Pārijāta and other works.

Vyāṣa says: "Wealth acquired by learning or by valour or given out of affection by the kindred shall be given exclusively to him (the acquirer) at the time of partition. It should not be claimed by other heirs."(1) *Commentary*—'Acquired by valour' means 'gained in war and otherwise.' The meaning of the word 'Soudhāyika' will be explained in the text of Kātyāyana beginning with '*Oodaya*, etc.'

Gautama says: "A learned man if unwilling need not give the unlearned what he himself acquired."(2) *Commentary*—'Acquired by himself.' After this 'by his learning' is understood. 'Vaidyah' means 'learned man.'

Kātyāyana says: "Nothing shall be given to the unlearned by the learned out of the wealth acquired by his learning. But he must share it with such as are equal or superior to him in learning."(3)

Narada says: "A learned man shall not give to the unlearned a share out of his own wealth if it was not acquired by him with the aid of the paternal wealth."(4) *Commentary*—What is here meant is this. Where one having had food and raiment out of the common property and acquired learning, gains without the aid of the common property by his own learning, then he need not give wealth so acquired to one void of learning. But if the wealth was acquired with the aid of the common property by his learning, it should be given even to the unlearned. Where

(1) Cole. Dig., Vol. II, 444, CCCXLVI. (2) Gautama, XXVIII, 29.
(3) Cole. Dig., Vol. II, 449, CCCL. (4) Narada, Chap. XIII, 11.

there is no use made of the common property during the time of the acquisition of learning, then although the common property is made use of during the time of the acquisition of wealth, the learned man need not give anything to anybody else. But the wealth belongs exclusively to the learned man; for Vyāsa after saying that wealth acquired without the aid of the paternal estate is not liable to partition, says that wealth acquired by learning is likewise not subject to partition. Therefore, the impartibility, which will be predicated in the subsequent portion, of wealth acquired by learning applies to cases where wealth is gained by learning acquired without the aid of the common estate, even though during the acquisition of such wealth the common estate is made use of. This is also Halāyudha's rule. Prakāsakāra and others, however, say that the texts speak of wealth acquired by learning without any aid of the paternal wealth. That view is wrong; for it is impossible to speak of such wealth as being acquired both with and without such aid.

Nārada again says, "(Let the father distribute among his sons all property) except wealth gained by valour or belonging to a wife and the gains of learning; they have been declared to be not liable to partition as also what is given by the father out of pleasure. This rule also applies to any property given by the mother from affection out of her own wealth; (for) the mother is as competent as the father (to make gifts)."(1) *Commentary*—From the use of the expression 'her own wealth it follows that this text applies to cases of Stridhana.

Vyāsa says: "What is given by a paternal grandfather or by a father out of affection belongs to him (to whom it is given). That and also what is given by a mother shall not be taken from him."(2)

Yājnavalkya says: "Whatever other property a man has himself acquired without prejudice to the paternal estate and anything received from a friend or on account of marriage shall not be shared with co-heirs."(3) *Commentary*—The word 'other' means 'other than anything by a friend, etc.'

Manu and Vishnu say: "What one acquires by his own efforts and without detriment to the father's wealth, he need not if unwilling give (to his co-heirs)"(4)

(1) Nārada, Chap. XIII, 6 & 7.
(2) Cole. Dig., Vol. II, 450, CCCLIV.
(3) Yājnavalkya, Chap. II, 118.
(4) Manu, Chap. IX, 208.

Vyāsa says: "What wealth a man acquires by his own ability without the aid of the father's estate, he need not give to his co-heirs as also what he acquires by learning."(1)

Kâtyāyana says: "When a man acquires learning from another, living upon food supplied by a stranger and by learning so acquired gains wealth, such wealth is said to be acquired by learning. What has been offered as a prize and won by a display of learning should be regarded as the gains of learning. It shall not be divided at a partition. What is acquired from a disciple, by officiating as a *ritwik*, by asking a question, by solving a doubtful question, by display of knowledge, by victory in a controversy, and by reciting the Vedas with ability is declared to be the gains of learning. It shall not be divided at a partition. This rule applies also to arts and handicrafts and to the profits made by superior skill in them. The prize offered for and won by learning and money received from a person performing a sacrifice, and from a disciple, all this is declared the gains of learning. Whatever is not thus acquired is common property. Brihaspati says that money staked and won by man by defeating his foe in a controversy is wealth acquired by learning and not liable to partition. Wealth acquired by boast of learning, received from a disciple, or for services as a *ritwik*, Bhrigu calls the gains of learning."(2) *Commentary*—'*Pradyayana*' means 'superior recitation.' 'Profits, etc.,' means 'whatever is gained in excess of a reasonable price by the skill of the seller belongs to him exclusively.' 'Prize offered for and won by learning,' that is, "wealth acquired in pursuance of a challenge in the form 'he who recites this chapter or argues this disputed point without blunder shall. take it' is the acquirer's exclusive property." 'Acquired by boast of learning' means "acquired by boast in the form 'I alone am skilled in this branch of learning.'"

Kātyāyana defines the wealth which is acquired by valour and therefore impartible, in the following passage: "When a person prepared to face a danger performs a heroic deed and the master well pleased at such action shows him a favour, whatever is so acquired is known as wealth acquired by valour. This is not liable to partition; likewise what is taken under a standard. Whatever is acquired in war by a man after putting the force of the enemy to

(1) Cole. Dig., Vol. II, 451, CCCLIV, 2. (2) Cole. Dig., Vol. II, 444, CCCXLVII.

rout and having risked his life for the sake of his master is said to be taken under a standard."(1)

The same author next defines what wealth acquired by marriage is partible. "What is received along with a maiden of equal class at the time of her marriage is considered as wealth received with the maiden, pure and conducive to prosperity. What is so received along with the wife should be considered as wealth acquired in marriage and all this kind of wealth should be regarded as useful in the performance of religious duties."(2)

Sankha and Likhita say: "According to Prajāpati there shall be no division of a house, waterpots, jewellery, concubines, apparel, water, pasture-ground and roads." *Commentary*—'*Vastu*' means 'house.' Whatever is made of metals, jewellery, that which is being worn. '*Anuyukta*' means 'enjoyed.' The meaning is that there shall be no division of women and apparel which had been exclusively used by one. '*Aprampracharavarthmana*' means 'drains or channels for the flow of water.'

Manu and Vishnu say: "Clothing, *patra*, ornaments, dressed rice, water, women, family priests and spiritual counsellors and pasture-ground, they declare not liable to partition."(3) *Commentary*—The word '*patra*' means 'money in the shape of bonds'; for Kātyāyana defines it as money in bonds; and Brihaspati also speaks of bonds minus debts. Halāyudha, however, interprets '*patra*' as 'vehicle.' '*Kritānnam*' is explained by Pārijata as 'cooked rice, etc.' 'Women' here means 'concubines'; for Goutama says, that there should be no division of concubines. '*Yogakshema*' means 'advisers, *purohits*, etc.,' because they exist for it. '*Prachara*' means 'the way for cattle to go by.' Prakasa says, that the word '*Yōgakshēma*' means 'any hereditary office held in the family of kings, etc.' Halāyudha, however, says, that the word '*yoga*' means 'boats, etc.,' and that the word '*kshema*' means 'fort, etc.'

Vyasa says: "A place of sacrifice, house, vehicles, dressed rice, water, and women shall not be divided among co-parceners, although they have descended from father to son for a thousand generations."

(1) Attributed to Manu and found at p. 465, CCCLV, Cole. Dig., Vol. II.
(2) Quoted as the text of Manu, Cole. Dig., Vol. II, 463, CCCLVIII. Cole. Dig., Vol. II, 468, CCCLXII.
(3) Manu, Chap. IX, 219.

(1) *Commentary.*—'*Kshetram*' means 'place of residence.' '*Patram*' according to Pràkāsakāra means 'vehicle.'

Kātyāyana says: "Wealth secured by documents or dedicated to religious purposes, water, wives, a corrody descended from ancestors, valuable apparel, jewellery and whatever is by its nature ineligible shall be assigned to the co-heirs to be enjoyed by them alternately for stated periods. Pasture-ground for cattle, the common way, clothing and anything else worn on the body and tools and appliances used in arts should not according to Brihaspati be divided. Bhrigu has declared that whatever be the customary law proved to be followed in a country, class or tribe or company of merchants, according to that law shall the distribution of heritage be made."(2) *Commentary*—'*Dhritam vastram*' means 'cloths of great value.' 'Worn on the body;' by this expression only things of small value are meant. 'Dedicated to religious purposes' means '*common to all*' or dedicated for the worship of the deity, such as bell, etc. The word '*Nibandah*' has already been explained. 'Ineligible' here means 'impossible physically to divide.' Halāyudha interprets the word '*Prayujya*' to mean 'outstanding debts.' Pārijāta explains the word to mean books of reference, etc., and says that they should not be divided even by fools. 'Tools for arts,' *i.e.*, brush, pencil, etc.

Brihaspati says: "Those who declared clothes, etc., indivisible have not properly inquired. The wealth of the rich depends on clothes and ornaments. Such wealth if not divided is not productive; nor can it be allotted to one alone. It should be intelligently divided, otherwise it would be useless. Clothes and ornaments are divided by selling them; bonds, by recovering the money lent; and cooked rice, by exchanging it for unprepared food. Water in a well or a pool shall be drawn and used as needed. Land and embankments shall be divided according to their respective shares. One woman (slave) shall be made to do duty at their houses according to their shares of inheritance. If there are many women, they shall be distributed equally. This rule applies to males (slaves) also. The emoluments of a hereditary office shall be divided equally. The pasture-ground shall be always used by the co-heirs according to their respective shares."(3) *Commentary*—'Unproductive' means

(1) Cole. Dig., Vol. II, 470, CCCLXIV. (2) Cole. Dig., Vol. II, 471, CCCXLV.
(3) Brihaspati, Chap. XXV, 79—84.

'being common and therefore useless to any.' It is impossible to allot all that to one co-heir. '*Yogakshemavatah*' means 'of the adviser, *purohit*, etc.' Here the liability of clothes, etc., of great value to partition is laid down. Therefore the texts of Manu and others speaking of the impartibility only prohibit the division in kind of clothes, etc., of small value; and also prohibit the division of clothes, etc., of great value in any mode other than the one here pointed out for their division. There is no contradiction between the various texts. Prakāsakāra, however, says that things of small value if worn on the person are not liable to partition, that much wealth existing in the shape of bonds, jewellery, elephants, etc., is certainly divisible and that the mode of their division is pointed out in those texts beginning with '*Madhyastitham*, etc.'

Kātyāyana next proceeds to state what kind of wealth acquired by learning is liable to partition. He says: "The wealth of brothers who acquired their learning in the family or from the father and wealth gained by valour are liable according to Brihaspati to partition."(1) *Commentary*—'In the family' means 'from the paternal grandfather, paternal uncle, etc.' The meaning is that wealth acquired by brothers instructed by these or by the father by mean of learning or valour is certainly divisible.

Narada says: "One who supports the family of a brother engaged in learning shall share in the wealth gained by such learning even if he is himself unlearned."(2) *Commentary*—'*Asrutah*' means 'unlearned.'

Manu says: "In property acquired by the eldest brother after the death of the father the younger brothers have a share, if they have been acquiring learning."(3) *Commentary*—This means 'where the eldest brother after the death of the father gains wealth by his own special learning, in wealth so acquired by the eldest he takes two shares, and the younger brothers one share each, if they had been acquiring learning.'

Manu again says: "But in the wealth acquired by the brothers, all unlearned, by their labour, it shall be equally divided, it being no patrimony. This is settled."(4) *Commentary*—The meaning is

(1) Cole. Dig., Vol. II, 448, CCCXLIX. (2) Narada, Chap. XIII, 10.
(3) Manu, Chap. IX, 204. (4) Manu, Chap. IX, 205.

that where all the brothers alike unlearned acquire wealth by agriculture, etc., then in that wealth which is not paternal their shares shall be equal and that there can be no deduction of an additional share allowed there on the ground of one having acquired the greater portion.

Gautama says: "Unlearned co-heirs shall divide their joint acquisitions equally."(1) *Commentary*—'Unlearned' means 'possessing no learning which would make that wealth exclusively the property of any one of them.'

Vasishtha says: "If one of the brothers has gained something by his own labour, he shall only receive a double share (in it)."(2) *Commentary*—If among many brothers one with the aid of the common estate acquires wealth by agriculture, etc., then he takes two shares and the rest one share each.

Vyāsa says: "Where one with the aid of carriage and weapons common to all gains wealth by valour, etc., all the brothers have shares in that wealth. He shall take two shares and the rest equal shares."(3) *Commentary*—This text must be construed to apply to cases of wealth acquired by learning, valour, etc., other than those previously defined.

Here ends the Chapter on Impartible Property.

CHAPTER VIII.

On Stridhana.

On this subject Manu says: "Never shall women secrete from the wealth of the family common to many or even from the property of her own family without the permission of her husband."(4) *Commentary*—From the use of the term 'family' it follows that family wealth is meant. From the wealth common to many, women should not take out anything without the permission of the owners. Similarly she shall not take out anything without the permission of her husband even from the wealth exclusively belonging to her husband independently of other members of the family.

(1) Gautama, Chap. XXVIII, 31.
(2) Vasishtha, Chap. XVII, 51.
(3) Not found.
(4) Manu, Chap. IX, 199.

Manu and Vishnu say : "The heirs of a man shall not take any jewels worn by his wives during his lifetime. Those who take shall be degraded."(1) *Commentary*—Prakāsakāra says that according to *Medhātithi* even such jewellery as have been worn without the permission of the husband should not be taken by the heirs.

Apastamba says : "Ornaments belong to the wife as also wealth given her by her kinsmen. So some hold."(2) *Commentary*—The term used in the original means 'money received as *Yautaka* at the marriage.' The meaning is that this also belongs to the wife alone.

Nārada says : "What was given to the wife by the husband from affection, she may enjoy it as she pleases even when he is dead, or give it away except immoveables."(3)

Vyāsa in the following passage shows over what portion of the property given by the husband, the wife has independent power. "A share of the wealth amounting to two in a thousand shall be given to the wife. This and the wealth given her by the husband she may use as she likes."(4) *Commentary*—As it is said that the limit of the wife's share is two thousand panas, it follows that where property is inconsiderable, some trifle alone might be given. Some say that in the light of the text that what is self-acquired can be given away at pleasure. This text is intended to refer to common property. Prakāsakāra, however, says that when the wives of disqualified husbands entitled to be maintained are separated, more than a thousand panas should not be given to them.

Kātyāyana says : "What a woman receives whether after marriage or before it, in the house of her husband or father, from her brother(5) or from her parents is called a gift from affectionate kindred. As such wealth is given to women that they may live well with it, they have absolute power over it. The absolute power of women over *Saudhayika* is always proclaimed. They can sell it or give it away as they please even if it be immoveable."(6) *Commentary*—The word '*Patyuh*' should be read along with '*griha*' as 'husband's house.' 'From the brother or

---

(1) Manu, Chap. IX, 200. (2) Apastamba, II, 6, 14, 9.
(3) Nāradà. Not found. (4) Cole. Dig., Vol. II, 600; CCCCLXII.
(5) Some read 'husband' for 'brother.'
(6) Cole. Dig., Vol. II, 594; CCCCLXXV, 1—3.

parents' is only illustrative. '*Saudhayika*' is therefore property received by a woman before or after the marriage, in the house of the husband or her father, from her father or kinsmen.' '*Anrusamsyam*' means 'good-behaviour.' It therefore follows that such wealth is given to them by their parents, etc., for their good living and in order that they may not go hard for want of money. Thus in *Saudhayika* wealth the absolute power of women extends to immoveable property also; but in what is given to them by their husbands, their absolute power is only over properties other than immoveable.

Accordingly Kātyāyana says: "What a woman receives from her husband she may dispose of as she pleases after his death; but while he lives, she must preserve it or commit it to his family. A childless woman not violating the bed of her lord and obedient to her spiritual guide may calmly enjoy it till her death. The heirs shall take it after her."(1) *Commentary*—'What is received from a husband' includes all wealth which becomes hers by her relation to her husband. It is two-fold;—what becomes hers after her husband's death owing to non-existence of other heirs;—what becomes hers even during her husband's lifetime, because of her relation to him. The first kind of wealth, she may dispose of as she likes all but the immoveable; being near her *guru* and protecting inviolate the bed of her lord, she must pass her days. In respect of immoveable property, the author says: "She may enjoy it till her death and that after that the heirs shall take it." In regard to the second kind of wealth, she must preserve it while he lives. According to Prakāsakāra she must await the permission of her husband in spending it and thus preserve it. Halāyudha and Pārijāta, however, say that 'what is received from her husband' means 'the *stridhana* given her by her husband.' But as there are doubts (regarding the extent of the power of alienation by a wife) even with regard to the property which had devolved upon the wife from the sonless deceased, Prakāsakāra's exposition is satisfactory and is more in keeping with the context, the doubts referred to being pressing.

Manu says: 'All faithful wives must thus be taken care of, barren, childless, destitute of relatives, living at home while their husbands are abroad, or afflicted with distress. Those relatives who

(1) Cole. Dig., Vol. II, 595, CCCCLXXVII.

take the property of such women while they live, a virtuous king should visit with the punishment meted out to robbers."(1) *Commentary*—'*Vasa*' means 'barren.' '*Aputrah*' means 'whose sons are dead.' '*Nishkulah*' means 'whose kinsmen by the mother and the father are dead.'

Devala says: "A woman's livelihood, ornaments, *sulka* and gain are her own property; she shall enjoy it all herself. Her husband shall not take it when in no distress. If he gives it away in vain or consumes it, he should return it to his wife with interest. He may use her property to relieve a son *of his* distress."(2) *Commentary*—'*Vritha*' means 'what is given for her livelihood.' '*Labbiah*' means 'money received from kinsmen.' '*Sulka*' means 'money given to the maiden for the marriage.' When he takes the money under pretext of necessity and gives it away uselessly, or consumes it, then, it must be returned with interest. But to relieve a son of his distress, the property of the wife may be taken even without her consent.

Kātyāyana says: "Neither the husband nor the son, neither the father nor the brother, have power to enjoy or alienate the property of a woman. If any one of them takes by force her property, he shall be made to pay interest and punished with a fine. But if he consumes it with her consent affectionately given, he shall be made to pay the principal alone when he becomes rich (enough to pay). Whatever she affectionately places at the disposal of any of these, seeing him afflicted with disease, immersed in grief or oppressed by creditors, he may repay it to her at his pleasure."(3) *Commentary*—The meaning of the last sentence is that when a woman finding her husband, etc., afflicted with disease, etc., gives them any money out of affection, the husband and the rest shall return it at their pleasure.

Yājnavalkya says: "A husband need not repay his wife any portion of her wealth which he had taken in a season of drout for charitable purposes, whilst suffering from disease or while in duress."(4) *Commentary*—'Charitable purposes' where they are

(1) Cole. Dig., Vol. II, 598, CCCCLXXX.
(2) Cole. Dig., Vol. II, 597, CCCCLXXVIII.
(3) Cole. Dig., Vol. II, 594, CCCCLXXV, 4—7.
(4) Yājnavalkya, Chap. II, 147.

necessary. When he is rendered incapable of work owing to disease, he need not repay his wife her money which he had taken for curing himself of the disease.

Kātyāyana says: "If subsequently (to taking his wife's money, he becomes the husband of two wives and does not treat her with proper consideration, he shall be made to repay her even the money which she had given him out of affection. When no provision is made for her food, raiment and residence to the wife, she may by force take her own property and claim her portion from her husband or his heir. This is the law of Likhita. If she get all this, she must live in the family of her husband; but if afflicted with disease and despairing of her life, she may then go to the family of her father. A wife who acts adversely to her husband, is shameless, wasteful of property and bent on incontinence does not deserve to have *stridhana*. Wealth exists for sacrifice. Therefore wealth should be given to those who are virtuous and not to women, fools and vicious persons. The *stridhana* promised by the husband to the wife should be given by the sons as a debt. If she does not live in the family of her husband, she may live in the family of the father." (1) *Commentary*—When the husband does not treat with kindness the wife who gave him her money out of affection, or when no provision is made for her food, raiment and residence, then she may take by force her wealth which she had given to her husband, seeing him afflicted with disease, etc. The rule of the Sastras is that even when she could have all these without effort, she can still take by force the wealth she had given to her husband. When she gets the money, she must reside in the family of her husband. The meaning of 'she may then go, etc.,' is that if she be afflicted with dangerous disease, she may go to the family of her kinsmen.

Here ends the Chapter on Stridhana.

S. SITARAMA SASTRI.

(1) Cole. Dig., Vol. II, 599, CCCCLXXXI.

NOTES OF INDIAN CASES.

Lalji Mal v. Nand Kishore, I. L. R., 19 A., 332. The question is one of some importance. It has been held by all High Courts that where a decree in execution is one for sale of hypothecated property, a purchaser under a private sale from the judgment-debtor of the property was a representative within the meaning of S. 244. Where the purchase is not by private sale, but in execution of a decree for money, it was held by the Calcutta High Court in *Gour Sundar Lahiri* v. *Hem Chunder Chowdhury*, I. L. R., 16 C., 355, that the purchaser was not a representative. We do not think there is any difference between a purchaser of mortgage property, and the purchaser of property under attachment as regards the question of their being the representatives of the judgment-debtor. Nor do we think that there can be any difference between the purchaser at a private sale and the purchaser at a court sale, notwithstanding the decision in I. L. R., 16 C. Of course, if the decree be a simple money decree, the purchaser of the judgment-debtor's property, not under attachment, cannot be regarded as his representative.

Madhao Prasad v. Kesho Prasad, I. L. R., 19 A. 337. An application for execution when there is no judgment-debtor on the record is held to be infructuous for the purpose of keeping the statute alive. But if at the time of the judgment-debtor's death an attachment was subsisting, further proceedings are held to be in accordance with law even though the representatives are not brought up on the record at the time. This view was taken upon the supposition that the further steps on attachment are purely ministerial and therefore the absence of the judgment-debtor's representative does not vitiate the proceedings. We are unable to accept this view as regards the nature of the application subsequent to attachment. It would follow therefore that whether there has been attachment or not, any proceeding in execution without the representative of the deceased judgment-debtor on the record is void. But see *Samia Pillay* v. *Chockalinga Chettiar*, I. L. R., 17 M., 76, and *Bal Kishen Das* v. *Bedmati Koer*, *Ib.* 20 C., 388.

Siyadattun Nissa v. Muhammad Mahmud, I. L. R , 19 A., 343. It appears to us that *Banerji* and *Aikman*, J. J., have taken a very proper view of the provisions of the Limitation Act as regards the computation of the period of limitation where the time for presentation of an appeal expired on a day in which the court was closed. S. 5 provides that it may be presented on the day the court re-opens. Time required for obtaining copies of judgment and decree may be deducted

in the computation under S. 12. Where, therefore, the time expired on the re-opening day and on that day copy of judgment was applied for and the appeal presented some days afterwards on the day in which the copy was given, the appeal was held to be in time.

The Court of Wards *v.* Venkatasurya Mahipati Ramakrishna Rao, I. L. R., 20 M., 169. Whether the Privy Council is going to reconsider its decision in *Sartaj Kuari* v. *Deoraj Kuari*, I. L. R., 10 A., 272, is a question on which it is difficult to pronounce a confident opinion. An attempt will shortly be made, to show that it is inapplicable to impartible estates in the Southern Country. More than one case raising the question is now before the Privy Council. That that decision went against the received opinion of this part of the country and almost effected a revolution in the law applicable to impartible estates goes without saying. There have been numerous cases decided by the courts in this province which expressly or impliedly denied the right of the Zemindar to alienate the Zemindari beyond his life-time. But the attempt made in this case to distinguish testamentary disposition from alienation *inter vivos* is, we think, bound to fail. Whatever justification there may be in the historical development of the law of wills, there seems to be none in favour of such a distinction at the present day.

The plaintiff appears to have had serious difficulties in the conduct of his case. He could not prove the child to be supposititious without at the same time making the Raja a party to the fraudulent introduction of the child. If the Raja was a party to the fraud the disposition in favour of the *aurasa* son was in favour of a *persona designata* and not to one whose taking the estate depended upon the condition of his fulfilling the character of an *aurasa* son. The only hope for the appellant before the Privy Council appears to be in the possibility of his being able to induce the judicial committee to re-consider their position in I. L. R., 10 A.

Queen-Empress *v.* Arumugam. With all respect to the High Court of Madras, we cannot help regarding this decision as a most unsatisfactory one. The four Judges who constituted the Bench are divided equally on the question as to whether reports made by a police officer under S. 173 of the Criminal Procedure Code are public documents. *Davies*, J., who was one of the referring Judges but was not a member of the Full Bench agreed with *Shephard* and *Subrahmania Aiyar*, J.J., in the view that such reports are public documents. We suppose that the contrary opinions of *Collins*, C. J., and *Benson*, J., must be supposed to have prevailed under the provisions of the Letters Patent.

While there is no question that the opinion of the other Judges is entitled to greater weight as it has the concurrence of *Davies*, J., also, we think it is highly to be regretted that the majority should have come to a conclusion against the privileges of the subject to get copies of documents prepared under Ss. 157 and 168 of the Criminal Procedure Code. We have read through the judgments most carefully and we feel constrained to think that *Subrahmania Aiyar*, J., has taken the right view of the law. The documents in question seem undoubtedly to be "the acts or the record of the acts of public servants." There is one satisfaction that the Judges who formed the majority confined themselves to the statement that copies should not be given to the accused before the trial. But unless the documents are used in evidence we fail to see how the accused who was not entitled before trial could become entitled after the commencement of the trial.

Sri Raja Chelikani Venkataramanayamma Garu *v.* **Appa Rao Bahadur Garu**, I. L. R., 20 M., 207. That the succession of daughter's sons to the maternal grandfather's estate is to an obstructed heritage seems clear upon the authorities; and that such a heritage is taken as tenants in common and not as joint tenants seems to follow from the rule denying the right of survivorship to cases other than those of succession on an obstructed heritage. The learned Judges seem also to be right in holding that there is no presumption that the property obtained as obstructed heritage becomes joint property in the hands of persons who are capable of becoming members of a joint family.

Muthia Chetty *v.* **Orr**, I. L. R., 20 M., 224. This case raises an interesting question. A receiver realized rents due to a judgment-debtor and misappropriated the same without paying into court. The question is raised whether the claim of the decree-holder is *pro tanto* discharged. We agree with *Shephard*, J., in thinking that it is not. *Davies*, J., no doubt asks the question why while payment into count is a valid discharge, payment to the officer of the Court—the receiver—should not be. The only answer that we can give is that payment into court operates as a discharge by a special statutory provision. Payment to a receiver is not given that effect. It is no good arguing that the receiver is agent of the court or of the decree-holder. If the misappropriation has resulted in loss, there is no reason why it should fall on the decree-holder any more than on a judgment-debtor.

SUMMARY OF RECENT CASES.

Debtor and Creditor—Appropriation of payments.

Cory Brothers and Co. (Limited) *v.* The Owners of the Turkish Steamship "Mecca," [1897, A. C. 286.]

The law obtaining in England with respect to appropriation of payments made by a debtor to his creditor may be thus briefly summarized.

When a debtor is making a payment to his creditor he may appropriate the money as he pleases, and the creditor must apply it accordingly. If the debtor does not make any such appropriation at the time of making the payment, the right of application devolves upon the creditor. It was at one time supposed that this right of the creditor must be exercised, either at the time of payment, or within a reasonable time thereafter. But it is now settled, that he can exercise this right at any moment before suit or by the suit itself, and he is not bound to declare his election in express terms. It was laid down in *Clayton's* case (1 Mer. 585, 608) that where an account current is kept between the parties as a banking account and neither party makes any appropriation at the time, "there is no room for any other appropriation than that which arises from the order in which the receipts and payments are carried into the account. Presumably it is the sum first paid that is first drawn out. It is the first item on the debit side of the account that is discharged or reduced by the first item on the credit side. The appropriation is made by the very act of setting the two items against each other." In the first place this presumption will not arise unless there is a current account between the parties with a setting of one item against the other. Secondly, this is not a rigid rule of law that governs the application of money but only the presumed intention of the creditor whose right it is to appropriate. Consequently, even in cases falling within the rule in Clayton's case, the presumption may be rebutted by other evidence. But so long as the right rests with the creditor and his choice not determined by any such presumption as above stated "there is no room" in the words of Lord McNaghten "as it seems to me, for the application of rules of law, such as the rule of the civil law, reasonable as it is, that if the debts are equal, the payment received is to be attributed to the debt first contracted."

Tort—Action, cause of—Nervous shock.

Wilkinson *v.* Downton [1897, II, Q. B., 57, per *Wright*, J.]

The defendant in practising what he seems to have thought a joke upon her, came to the plaintiff one evening and told her that her husband who had gone to the races that morning had met with an accident in which he had both his legs broken; that he was lying at some public house at a distance; and that he had desired the defendant to request the plaintiff to go to him at once with a cab and some pillows to bring him home. These statements were false to the defendant's knowledge, and were made with the intent that they should be believed by the plaintiff. The result of this was that there was a violent shock to the plaintiff's nervous system, producing vomiting and other serious consequences. These consequences were not due to any previous ill health or weakness of constitution, and the plaintiff had no predisposition to nervous shocks. Under these circumstances *Wright*, J., held that the plaintiff was entitled to recover damages for injury to her health. The counsel for the plaintiff attempted to bring the case within the doctrine of *Pasley* v. *Freeman* (3, T, R., p. 51). But this contention was not upheld by the presiding Judge who was of opinion that to do so would be extending that doctrine. He however decreed for plaintiff upon another ground. He put it thus: "The defendant has, as I assume for the moment, wilfully done harm to the plaintiff, that is to say, to infringe her legal right to personal safety and has in part thereby caused physical harm to her." He then found that the defendant's act was plainly calculated to produce the effect complained of, that an intention to produce it must be imputed to the defendant and for the same reason held that the consequence was not too remote.

There is no doubt that the decision of the Judge is correct, but the reasons given by him for his decision seem rather questionable. It is clear that this cannot come under the doctrine of *Pasley* v. *Freeman* (3, T, R., 51), for in cases like this it will be impossible to find all the analogue of the various facts necessary to give a right to an action of deceit, and the Judge was therefore right in rejecting the argument based on that case. On the other hand the Judge seems to lay some stress on the word 'wilfully' and seems to add one more to the list of the exceptional class of torts going under the name of "malicious wrongs." To that extent the statement of the law by the Judge seems doubtful. The case is one exactly analogous to the tort known as assault—the mind being the part of the individual that is primarily affected by the defendant's acts instead of his body which is usually

the case in an ordinary assault. The Indian Penal Code has however excluded cases like this from the category of assault and criminal force (*vide* Ss. 349, 350, 351, Indian Penal Code) although if death ensued as a result of such act, the man will be liable for murder or culpable homicide, as the case may be, unless he brings himself within any of the exceptions (*vide* Ss. 93 and 201, Indian Penal Code). In all these cases there will always be a difficulty of proving whether the result was the natural and probable consequence of the defendant's acts and on this point "what is a natural and probable consequence" there seems to be a good deal of conflict among the decided cases.

Forfeiture of lease—Practice—Discovery.

Mexborough (Earl of) *v.* Whitwood Urban District Council, [1897, II, Q. B., 111, C. A.]

Where, in any action, an issue is raised for the purpose of obtaining judgment on the ground of forfeiture by the defendant, the court will not, with regard to that issue, make any order, either for the discovery of documents, or for the administration of interrogatories. The rule in this respect is the same as the rule of Common Law, that, where a common informer sues for a penalty, the courts will not help him in any way by their procedure. These two rules are part of the substantive law and are not merely rules of procedure.

The plaintiff sued the defendants to recover possession of certain premises demised on lease on the ground that the lease had been forfeited by breach of some covenant contained in the lease. The only question at issue in the action was, whether there had been a forfeiture by breach of the covenant? The plaintiff applied for an order for discovery of documents, and also for leave to administer interrogatories to the defendants.

Held: by the Court of Appeal that the rule of law as to discovery and interrogatories was the same with respect to cases of forfeiture as to cases of penalty, and that the plaintiff's application must therefore be rejected.

Ecclesiastical law—Superstitious reverence.

Great Bardfield (Vicar of) *v.* All having interest, [1897, Probate Division, 185.]

In this case an application was made to the Court to decree the grant of a faculty authorizing the vicar and the church warden of the parish of Great Bardfield, Essex, to restore the chancel screen of the

parish church by placing three figures upon it. The figures were those of Jesus on the Cross, of the Blessed Virgin, and of St. John. These figures had been removed at the general destruction of roods under Queen Elizabeth. It appeared from the evidence that in the absence of these figures the screen presented a maimed appearance, while with these the screen will be an object of considerable interest and beauty. The Chancellor granted the faculty, being of opinion that the erection of these figures was not likely to be abused by superstitious reverence being paid to it.

It is really a great boon to this country that Courts have no jurisdiction to try and decide religious matters and thus indirectly enforce particular religious convictions. Superstitious reverence, adoration, or worship, is interpreted by the courts in England not only to mean the limited idea of the figure itself being worshipped, but also the far more extended conception of worship, adoration, or reverence paid to the deity in presence of or before objects or figures. It is intended to include all and every form or degree of worship paid to the deity in which the figure is made to take a place or play a part. What a striking contrast between the West and the East in this matter, the one enjoining all worship through idols, while the other prohibiting every such worship.

Practice—Defence, frivolous and vexatious.

Remmington v. Scoles, [1897, II, Ch. D., 1, C. A.]

There is no doubt that a defendant is at liberty to put in a defence confined to denying the allegations in the statement of claim without stating any case of his own. But a court has always an inherent jurisdiction to prevent an abuse of its procedure, and if in any exceptional case it finds that the defence put in is a mere sham, it can reject the defence.

The defendant, a solicitor, with the sole object of hindering or delaying the plaintiff, delivered a statement of defence in which he either denied or refused to admit each and every one of the allegations in the statement of claim, but set up no case of his own. In previous proceedings in another action he had admitted upon oath several of the material statements which he now denied, and had not denied the others.

Held: by the Court of Appeal, confirming the decision of *Romer*, J., that the defence was sham and vexatious and that it was a fit case for striking out the defence.

Will—Precatory trust—Election.

In re: **William; Williams *v.* Williams,** [1897, II, Ch. D., 12 C. A.]

A testator gave the residue of his estate, both real and personal, subject to the payment of his debts with his wife Lucy, her heirs, executors, administrators and assigns absolutely "in the fullest confidence that she will carry out my wishes in the following particulars," *i.e.*, that she would maintain a policy of £1,000 on her life and belonging to her, and that at her death she would leave the moneys due under the policy and also the moneys payable under another policy of £300 on his own life to his daughter in trust for her sole and separate use. He appointed his wife and another person his executors.

Held: (by the Court of Appeals, *Rigby, L.J.*, dissenting) that the wife took the residuary estate including the two life policies as her absolute property without any sort of trust attaching to them, and that she was not put to any election as to her own policy.

JOTTING AND CUTTINGS.

We beg to acknowledge with thanks the following publications:—

The Roman Law Examination Guide, by W. Addington Willis, LL.B., published by *Butterworth & Co., 7 Fleet Street, E. C., London* (1897).

Legal Maxims (2nd Edition), by P. Srinivasa Rao, published by *Messrs. Higginbotham & Co., Mount Road, Madras.*

The Law of Torts, by *Ratanlal* and *Dhirajlal.*

The Albany Law Journal for August (*in exchange*).

The University Law Review for August (*in exchange*).

The Educational Review for August (*in exchange*).

The Calcutta Weekly Notes for August (*in exchange*).

The Green Bag for August (*in exchange*).

The Allahabad Weekly Notes from August (*in exchange*).

The Canada Law Journal for August (*in exchange*).

The Canadian Law Times for August (*in exchange*).

Can a Wife sue her Husband for Libel?

Mr. Justice Kennedy gave judgment at Liverpool last week in a case of *Robinson* v. *Robinson*, an action for damages for libel brought by a wife against her husband, in which Mr. Langdon was for the plaintiff and Mr. Jordon for the defendant. The case was tried at Manchester. The learned judge's written judgment contained the following: 'This is an action by a wife against her husband for libel. The facts of the case are not in dispute, and by consent the case was taken before myself without a jury. The plaintiff in September last obtained a separation order under the provisions of the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39). After that time she lived apart, receiving from him under the order a weekly payment of 18*s.* Some time after the order had been made she accepted the invitation of a cousin, Mrs. Partington, who was the licensee of the Castle Hotel, Clitheroe, to come to reside with her there, paying nothing for her board and lodging, but giving at her will some help in the management of Mrs. Partington's business in the hotel. Whilst the plaintiff was living under the said circumstances at the Castle Hotel the defendant sent her by telegraph the three messages which are the libels complained of in this action. Of the defamatory import of these messages, which in disgusting terms imputed to her sexual immorality, there is no question, nor, inasmuch as they were telegraphic messages, is their any question as to publication. The plaintiff showed them after their arrival to Mrs. Partington, and that lady, although she was much attached to the plaintiff, felt obliged, after reading the third telegram, to ask the plaintiff to leave her house. The plaintiff thereupon commenced the present action against the defendant. She does not ask for substantial damages. Her aim is by obtaining an injunction to prevent the repetition of this injurious and insulting conduct on the part of the defendant. The facts are not disputed by the defendant. There is no justification for the libels. His defence to the action is that, in point of law, it is not maintainable. He contends that, as these libels are libels upon the plaintiff's personal character, and not in regard to her business or property, and as she is therefore not suing him "for the protection and security of her own separate property" within the meaning of the Married Women's Property Act, 1882, s. 12, the action is one of tort, which, as a married

woman, although separated from him by the magistrate's order, she cannot bring against her husband. I agree with the defendant's counsel that the plaintiff is not helped by the last-mentioned enactment. . . . . The question is this. Can the plaintiff, not being enabled to do so by the Married Women's Property Act, 1882, sue the husband for a libel? . . . . . . The inability in general of the wife to sue her husband for a tort is founded not merely upon a rule of legal procedure necessitating the joinder of the husband as a co-plaintiff, but upon the principle that husband and wife form in the eye of the law one person. This was expressly decided in *Phillips* v. *Barnett*, 45 Law J. Rep. Q. B. 277; L. R. 1, Q. B. Div. 436. Unless, therefore, this is affected by the peculiar position of the plaintiff as a wife who has obtained a separation order, the defendant is apparently entitled to succeed in the present action. Is it so affected? This depends upon the effect to be given to certain provisions of the Summary Jurisdiction (Married Women) Act, 1895, under which the separation order was made, and the Divorce and Matrimonial Causes Act, 1857. . . . . . A libel by a husband upon a separated wife must in most cases be especially injurious to her. In the absence of any authority, it appears to me, looking at the plain intention of the statute, to give the judicially-separated wife full power, as a *feme sole*, to protect herself by action against all wrongs and injuries. . . . I give judgment for the plaintiff, with costs, for 20*s*. as nominal damages, as she does not ask for substantial damages, and an injunction against the repetition of the libels complanied of.—*The English Law Journal.*

***

A Legal Laugh.—The *Scottish American* tells a story of a cobbler who was sentenced by a Scottish Magistrate to pay a fine of half a crown, or, in default, twenty-four hours' hard labor. If he chose the latter, he would be taken to the jail at Perth. "Then I'll go Perth," he said, "for I have some business there." An official conveyed him to Perth, but when the cobbler reached the jail he said he would pay the fine. The Governor found he would have to take it. "And now," said the cobbler, "I want my fare home." The Governor demurred, but discovered there was no alternative; the prisoner must be sent at the public expense to the place he had been brought from."—*The Albany Law Journal.*

REVIEWS.

The Roman Law Examination Guide, by W. Addington Willis, LL.B., Bar.-at-Law, published by *Butterworth and Co., 7 Fleet Street, E. C., London* (1897):—This is a neat little book intended to help students to form an idea of the style of questions usually set in examinations in Roman Law and of the answers expected. The book covers the whole field of Roman Law except the law of intestate succession and the law of actions. The answers are clear and succinct and the book is very well adapted to the needs of candidates for examinations in Roman Law. Now that Roman Law is one of the subjects for the Law Examination in the Madras University, the book is likely to prove a great favourite with students in Madras.